

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

BRENDA LERMA, INDIVIDUALLY,	§	
AS NEXT FRIEND OF J.L. AND D.L.,	§	
AND AS REPRESENTATIVE OF THE	§	
ESTATE OF LUIS LERMA; FOR AND	§	
ON BEHALF OF ALL THOSE	§	
ENTITLED TO RECOVER FOR HIS	§	CIVIL ACTION NO.
DEATH UNDER THE TEXAS	§	B12229
WRONGFUL DEATH AND	§	
SURVIVAL ACTS	§	
	§	
V.	§	JURY DEMANDED
	§	
BRIGGS & STRATTON	§	
CORPORATION and BRIGGS &	§	
STRATTON POWER PRODUCTS	§	
GROUP, LLC	§	

MOTION TO PRODUCE

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, Briggs & Stratton Power Products Group, LLC (“Briggs & Stratton”) and files this its Motion to require the Sheriff of Cameron County, by designated representative, to produce a certain electric drill, power cord and a copy of the chain of custody document to Briggs & Stratton. As good and sufficient grounds therefore, Briggs & Stratton would respectfully show the Court the following:

I.

The above-entitled and numbered cause arises out of an electrocution of the Plaintiff’s Decedent, Luis Lerma, on or about May 21, 2011. At that time, Luis Lerma was operating an electric drill in connection with building the deck of a fishing shack in

Laguna Madre outside Arroyo City, Texas. The electric power for the drill was being supplied by a Briggs & Stratton generator. While Luis Lerma was standing in the water, operating the electric drill, he was electrocuted.

The event was investigated by, among others, deputies of the Sheriff of Cameron County. As part of their investigation, the deputies photographed the drill that Luis Lerma had been using. (*See* Exhibit “A” attached hereto). A witness to the occurrence, Israel Ramos has confirmed that Luis Lerma was operating the drill while standing in the water and that the drill had been supplied for the work by the drill’s owner, Enrique Hinojosa. (*See* Exhibit “B”, deposition Israel Ramos pp. 14-20, 51).

The Sheriff’s Department, as part of its investigation, secured the drill on the day of the occurrence and has maintained the drill as physical evidence. It is unlikely that there will be any criminal proceeding arising out of the occurrence at this time. Therefore, the Sheriff’s Office no longer needs to retain possession and custody of the electric drill and power cord. The Sheriff’s Department, however, cannot release the electric drill to the parties in this case without an appropriate direction from the Court where the case is pending.

II.

The electric drill and its power cord, together with a copy of the chain of custody document, are, or may be, evidence in this action. In addition, given the nature of the occurrence, it is probable that the electric drill will have to be tested and disassembled. A subpoena issued to the Sherriff’s Department, under these circumstances, is not sufficient. The electric drill and its power cord should be obtained in accordance with an

order of this Court which sets the terms and conditions that would allow the parties to this suit access to the evidence, and would permit testing, disassembly or any other action that would alter the condition of the electric drill in question to be conducted in a manner that is fair and reasonable to all parties.

III.

Accordingly, Briggs & Stratton requests that the Court order that the Sheriff's Department of Cameron County produce the electric drill and power cord, depicted in the photograph attached hereto as Exhibit "A", and the chain of custody document to:

Briggs & Stratton Power Products Group, LLC

by delivering same to its attorney of record in this case, or the attorney's designated representative:

Michael G. Terry
HARTLINE DACUS BARGER DREYER LLP
800 N. Shoreline Blvd., Suite 2000 North
Corpus Christi, Texas 78401

It is further,

ORDERED that,

A. The attorney for Briggs & Stratton Power Products Group, LLC shall retain custody of the electric drill, power cord and chain of custody document for the duration of this case; that is until the case is finally concluded, to include the prosecution of any appeal; provided, however, that custody of the evidence is subject to further order of this Court or unless the Sheriff's Department requests in writing that the electric drill and power cord be returned to the

Sheriff of Cameron County, which written request is to be complied with.

- B. The attorney for Briggs & Stratton Power Products Group, LLC shall make the electric drill and its power cord available at any deposition or hearing, as requested by any party, and shall make the electric drill and power cord available at the time of trial.
- C. The attorney for Briggs & Stratton Power Products Group, LLC shall make the electric drill and its power cord available to any party for the purpose of visual inspection and such testing as can be performed without powering the drill or altering its present condition (*e.g.* continuity testing); provided, however, that a chain of custody document shall be created and maintained by the attorney for Briggs & Stratton Power Products Group, LLC if the electric drill and its power cord leave the custody and control of Briggs & Stratton.
- D. Any testing of the electric drill that requires the drill to be powered, or any inspection or testing of the electric drill that requires the electric drill and power cord to be disassembled, shall be performed only in the presence of a designated representative of the parties (to include expert witnesses) unless a party waives in writing its right to be present for such testing or disassembly. For any testing or disassembly to the electric drill there shall be a written record created which identifies the time, place, and activity conducted, and shall bear the signatures of all persons in attendance.
- E. At the conclusion of the case, if the electric drill and power cord have been admitted into evidence, Briggs & Stratton will move the Court for an order

releasing the electric drill and power cord to Briggs & Stratton. At the conclusion of the case, Briggs & Stratton will first offer the electric drill and power cord to the Sheriff of Cameron County, and thereafter shall make the electric drill and power cord available to its owner:

Juan Enrique Hinojosa
28400 Bean Road
Rio Hondo, Texas

by giving him written notice that the electric drill and power cord are available and complying with his request as to disposition.

IV.

Counsel for Briggs & Stratton has conferred with the attorney for the Plaintiffs, and the attorney for the Plaintiffs has no opposition to the granting of this Motion and the entry of an order governing the custody and handling of the electric drill and power cord during the pendency of the case as set out in the Motion.

WHEREFORE, PREMISES CONSIDERED, Briggs & Stratton Power Products Group, LLC requests an Order of the Court directing the Sheriff of Cameron County, by the Sheriff's designated representative, to deliver to the designated representative of the attorney for Briggs & Stratton Power Products Group, LLC, the electric drill, power cord and a copy of the chain of custody document upon presentation of a certified copy of the Order of Production, and for Briggs & Stratton Power Products Group, LLC to retain custody of the electric drill, power cord and chain of custody document in accordance with the Order of the Court.

Respectfully submitted,

HARTLINE DACUS BARGER DREYER LLP

/s/Michael G. Terry

Michael G. Terry (*attorney-in-charge*)

State Bar No. 19799800

Federal ID No. 926

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ATTORNEY FOR BRIGGS & STRATTON
POWER PRODUCTS GROUP, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all counsel of record by the method indicated below on this the 1st day of November, 2013.

s/ Michael G. Terry

MICHAEL G. TERRY

VIA FACSIMILE (361) 653-3333:

Mr. Stuart R. White

Mr. Craig M. Sico

Sico White Hoelscher and Braugh, LLP

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